

M&A TRANSACTIONS: 8 ESSENTIAL COMPLIANCE REQUIREMENTS



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In 2015 alone, there were more than 44,000 [merger and acquisition deals](#) executed worldwide, almost a third of which originated in the U.S. The combined value of these deals exceeded \$4.5 trillion.

There is a myriad of potential hazards and unforeseen issues that can pop up during the deal. The best way to avoid these is to be prepared. To help you stay ahead of the fray, here are eight important compliance best practices for M&A transactions.

1. KNOW THE ENTITIES

One of the first steps when entering a deal is to learn which entities are involved. Determine the constituents. If you are looking at a general merger, you will want to also identify the target. In a triangular merger, you will want to look for the target and subsidiary.

It's critical to identify any subsidiary or related entities. You'll need to know what they are, what industries they work in and where they're located, including information like whether they're qualified to do business in other states and countries.

Knowing who and what is involved, and how the pieces are related, will help guide the due diligence process.

2. DETERMINE GOOD STANDING

Once you know who the entities are, the next step is to find out if they are in good standing. This means the entity is in compliance with all state requirements, such as filing annual reports and paying all appropriate taxes.

Good standing also means ensuring the constituent and subsidiary, as well as any related entities, are legally able to do business at the time of the deal and in the location where it will be executed domestically, and, if relevant, abroad.

If the involved parties are not in good standing, it's not always a deal breaker. See if the issues can be resolved and what the time frame will be for moving forward.

3. DECIDE IF A SPECIAL PURPOSE ENTITY (SPECIAL PURPOSE VEHICLE) IS NECESSARY

Special purpose entities (or special purpose vehicles) often come into play in a triangular merger. These deals have an additional layer of complexity. You need to determine when to form the SPE/SPV and whether it has to be qualified to do business in additional locations.

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It's critical to know how these particular entities are regulated, and whether any extra steps—including establishing an Independent Director—are required.

4. SEARCH UCC FILINGS

It's important to know which [UCC-1](#) finance statements are on file for the acquiring entity and for target entities. You also need to confirm the statements are valid and in the correct order.

If the target is in the creditor position, you'll need to ensure it successfully secured all its interest. (The target's portfolio may help you answer this question.) If the target is in the debtor position, it's important to be sure its creditor interest is no longer valid.

After the research is complete, does the target still look as good as originally thought? If the public record does not accurately reflect the status and position of the entities, you will need to recalculate. This could affect the client's position, or increase the cost to close or both.

5. ENSURE BUSINESS LICENSE COMPLIANCE

Ensuring business license compliance is a complex but crucial part of the M&A process. Most entities require at least one business license to comply with tax and safety mandates. Others need multiple sign-offs to ensure they're in compliance with everything from the local fire department to federal agencies. This may be the case if your entities are in a regulated industry. Pharmaceutical licensing, for example, can occur on a federal, state, county and city level.

With regulated industries, also look out for potential anti-trust concerns, and whether they impact compliance pieces in terms of licensing.

6. MANAGE IP ASSETS

Another factor that can impact a deal are IP assets. It's important to know if the constituents hold any patents or trademarks. By identifying all moving pieces in advance, you can avoid tricky situations like not being able to use a voluntary assumed name in every state.

Knowing how to transfer and assign these assets, as well as when and how to do it, will help ensure the deal proceeds on time and on budget.

7. ADDRESS AML CONCERNS

As most companies operate globally, it's imperative to address money laundering concerns. Don't forget to look beyond the U.S. borders when researching the locations of constituent, subsidiary and related entities. This may require an SDN check; in the case of financial institutions, an LEI review.

You don't want to find out at the last minute that the target is distributing products to a company in India that sells to Iran, putting your client in violation of U.S. sanctions.



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8. ENSURING CORRECT TIMING

An important part of the process is knowing when to take each of the steps listed above. Some must be done before the deal can be completed—such as ensuring each constituent is in good standing. Others can't be done until the deal is complete—such as making filings to indicate the acquirer is now the owner of certain assets. Other steps can be taken either before or after the deal is consummated.

Timing is also a concern when filing documents that affect the statutory transactions—such as mergers, conversions, qualifications, or withdrawals—that might be involved in a deal. Filing office backlogs or document rejections can delay the transactions' effective dates.

There are steps you can take to avoid these problems, including using delayed effective dates when filing, or obtaining pre-clearance of the documents before delivering them for filing.

LEARN MORE

For a thorough look at all the steps necessary to ensure a deal's success, view our on-demand webinar: [Executing the Deal – Compliance Requirements](#).

To learn more about how CT can help you with your [merger and acquisition needs](#), contact a CT representative at 844-318-1457 (toll-free US).

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